IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

MFA.No. 1270 of 2002()

OPMV.2807/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI

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APPELLANT: 2ND RESPONDENT

T.M.JACOB, S/O. MATHAN, AGED 60 YEARS,
THALIKKUNEL HOUSE, ERANJIMANGADU P.O.,
NILAMBUR, MALAPPURAM

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: PETITIONER & RESPONDENTS 1 & 3

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1. K.D.POULOSE S/O. DEVASIYA, KUNDOTH HOUSE
PERUMBATHOOR, KURUMBALAGODE P.O.,
MALAPPURAM DISTRICT

(*) 2. P.P.PRABHAKARAN S/O. PARAMESWARAN NAIR,
THAVARECHIL VEEDU, KUNDILATTIYIL, ERUMAMUNDA P.O.(DIED.ADDL.R4 IMPLEADED)

3. UNITED INDIA INSURANCE COMPANY LIMITED,
NILAMBUR.

ADDL.R4:

SMT. SULOCHANA @ THANKU D/O.LATE P.P.PRABHAKARAN, KIZHAKKETHIL HOUSE, POST ERUMAMUNDA, MALAPPURAM DISTRICT.

(*) ADDL.R4 IMPLEADED AS LEGAL HEIR OF R2 VIDE ORDER IN IA NO.1446/2003 DATED 3.9.2003.

R1 BY ADV. SRI.DEVIDAS.V.K
SMT.P.VIJAYAMMA
R3 BY ADV. SMT.P.A.REZIYA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.1270 of 2002

Dated, this the 24th day of September, 2007

JUDGMENT

The second respondent in O.P.(MV) No.2807/1994 on the file of the Motor Accidents Claims Tribunal, Manjeri is the appellant. He was the owner of a tractor bearing registration No.KL-10/A-7858. This appeal is filed against an award passed by the Tribunal by which it had awarded an amount of Rs.98,000/- as compensation to the first respondent for the injury sustained by him in an accident. First respondent filed Original Petition claiming an amount of Rs.15,000/- as compensation. It was alleged that on 22.3.1994 he was travelling in the tractor bearing registration No.KL-10/A-7858 as the owner of the bricks carried therein. It is averred that the vehicle capsized on account of the rash or negligent driving of the deceased second respondent who was the driver of the tractor. Third respondent was impleaded as the insurer of the vehicle. Appellant as well as the driver remained exparte. Insurer alone contested. Negligence alleged was denied. It was admitted that the vehicle was covered with a valid policy of insurance. But it was contended that no additional premium was collected from the owner of the vehicle to carry goods in the vehicle and gratuitous passengers were also not covered with the policy. It was also contended that there was violation of policy conditions.

2. During the pendency of the Original Petition first respondent filed a

petition for amendment of the claim made in the Original Petition. That petition was allowed and the quantum of compensation claimed was enhanced from Rs.15,000/- to Rs.2 lakhs. Subsequently the first respondent filed another petition for amendment. That was also seen allowed. Tribunal found that accident occurred due to the negligence of the driver of the tractor and first respondent was entitled to get an amount of Rs.98,000/- as compensation. Third respondent insurer was directed to pay the amount and then recover it from the appellant.

3. When the Insurance Company initiated steps for recovery of the amount the appellant filed this appeal along with a petition to condone delay of 281 days in filing the appeal. Delay was condoned. Heard counsel for the appellant, counsel for the first respondent claimant and also the counsel for the third respondent insurer.

4. As I have already stated in the Original Petition initially the compensation claimed was Rs.15,000/-. It is true that the appellant did not appear and contest. On 12.11.1997 I.A.No.2930/1997 was filed for amending the Original Petition. It was posted to 24.1.1998. Though the case was posted to 24.1.1998 it was taken on 26.11.1997. In I.A.No.2930/1997 an order that 'No counter. Allowed' was passed. Thereafter another application as I.A.No.4458/2000 was filed on 24.10.2000. That petition was allowed on 27.11.2000. Tribunal had awarded compensation for permanent disability and again for loss of earning. The Medical Board had assessed the disability of the

first respondent as partial permanent disability of 18%. In addition to huge compensation for loss of earning power Tribunal awarded compensation for functional disability. Thereafter directed the insurer to pay the amount and then recover the same from the owner. Considering all aspects of the matter I am of the view that it is only just and proper that the appellant/owner be given an opportunity to contest the matter on merits. For that purpose the case is to go back.

In the result, appeal is allowed. Award under challenge is hereby set aside. Case is remanded to the Tribunal for fresh disposal in accordance with law after affording an opportunity to the appellant as well as respondents to file written statement and also to adduce evidence, if so advised. Being an old case the Tribunal shall try and dispose of the same as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment. It is made clear that if the insurer had deposited any amount and if the first respondent/claimant had withdrawn any amount, he need not re-deposit the amount and how that amount is to be adjusted will be decided by the Tribunal at the time of disposal of the Original Petition.

C.M.P.No.7621/2002 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.1270 of 2002

JUDGMENT

24th September, 2007